

MEMORANDUM

DATE: June 13, 2005

TO: State Coastal Conservancy

FROM: Marcia Grimm, Senior Staff Counsel

SUBJECT: Conflict-of-Interest Code

On June 13, 2005 staff of the California Fair Political Practices Commission (FPPC) submitted sixteen specific comments on the Conservancy's Conflict-of-Interest Code. The FPPC comments, and responses of the Coastal Conservancy staff, are summarized on the attached. In response to the comments, Conservancy staff is recommending that the amended Conflict-of-Interest Code attached as Exhibit 2 to Agenda Item 13.i be replaced with the revised Exhibit 2 attached, and that FPPC notes and SCC responses be included in Exhibit 3.

As indicated in the attached FPPC Notes and Responses, a number of comments were merely corrections of errors made in the reproduction of the code that was produced for public review. These corrections have now been made in the revised Exhibit 2.

Other changes are nonsubstantial or grammatical, but because they do revise the Code they are shown in the revised Exhibit 2 in underline and strikeout format. One proposed change may be considered substantive, however. This is the requirement that consultants to the Conservancy file under the broadest disclosure categories required of any filers, instead of merely under category b, as in the current code. Consistent with provisions of law and the current code, the filing required of consultants is always determined on a case-by-case basis in any event, so this change actually reflects current practice and staff's interpretation of the law and code requirements. Under 2 Cal. Code of Regulations Section 18750(d), a proposed amendment that has been modified from that which was made available to the public may be adopted without further public notice if the changes or modifications are nonsubstantial or solely grammatical in nature, or if the resulting code or amendment is sufficiently related to the text made available to the public that the public was adequately placed on notice that the code or amendment could result from the original proposal. In the latter case, the full text of the resulting code or amendment must be available to the public for at least 15 days prior to the date on which the code or amendment is adopted. Staff will not file the Conservancy code amendments, if approved, until these amendments have been available to the public for an additional fifteen days.

Finally, the FPPC verbally requested one additional change, expressly indicating that "income", for purposes of disclosure, includes gifts, loans and travel payments. This is declarative of existing law and revised Exhibit 2 reflects that change as well.

Exhibit 3: Written Comments

Conflict-of-Interest Code amendment for Coastal Conservancy

Notes to text provided by Fair Political Practices Commission and **Conservancy staff (SCC) responses:**

FPPC: The following notes are for changes to the proposed code. Please make any changes in strike out and underline format using the text from current (not proposed) code.

1. Add a zero - should read 81000

SCC RESPONSE: correction made. This was an error in reproduction of the current code and does not represent a change.

2. In the current code, there is a comma here – so a comma should be added and struck out of if don't want it in.

SCC RESPONSE: correction made. This is a grammatical or nonsubstantial change.

3. Strike out the period after the parenthesis and add an underscored period inside.

SCC RESPONSE: correction made. This is a grammatical or nonsubstantial change.

4. Strike out the parentheses around the “s.”

SCC RESPONSE: correction made. This is a grammatical or nonsubstantial change.

5. Add a space after the “2.”

SCC RESPONSE: correction made. This was an error in reproduction of the current code and does not represent a change.

6. Should read: “...for Board Members, their alternates, and Executive Officer...”
Their statements should be filed with us as well as the actual members’.

SCC RESPONSE: Conservancy Board Members do not have alternates. Under Public Resources Code Section 31100, Members representing the California Coastal Commission, the Resources Agency and the Department of Finance may designate one of their employees to serve on the conservancy in their absence. Those designees would be covered by the Act for disqualification purposes only and would not be subject to disclosure obligations to the Conservancy, under 2 Cal. Code of Regulations §18730(3), because (a) they are designated in a conflict of interest code for another agency within whose geographical jurisdiction the Conservancy's is wholly located; (b) the disclosure assigned in the code of the other agencies is the same as that required under article 2 of chapter 7 of the Political Reform Act (Govt. Code Section 87200); and (c) the filing officer is the same for all three agencies. Therefore, the requested change was not made.

Exhibit 3: Written Comments

7. The heading “Disclosure Categories” is not lined up.

SCC RESPONSE: correction made. This was an error in reproduction of the current code and does not represent a change.

8. In the current code, there is a footnote marker ^{1/} next to Conservancy Members. I’m not sure why it’s there. It should be added in and struck out.

SCC RESPONSE: correction made. This is a grammatical or nonsubstantial change.

9. I’m questioning why this position (Senior Accounting Officer) is listed in both categories. Would this person’s duties warrant inclusion in Category “a” or would “b” be okay?

SCC RESPONSE: The Senior Accounting Officer has responsibility for management of all of the agency’s finances, including encumbrances and disbursements in furtherance of the Conservancy’s real estate and development projects as well as for the provision of goods, services, materials or facilities. Conservancy staff believes it is appropriate for the Senior Accounting Officer to disclose any interests that may be affected by either type of expenditure. Therefore, the requested change was not made.

10. The current code lists “Business Services Officer” first and then “Management Services Technician.” It looks like these titles got switched.

SCC RESPONSE: correction made. This was an error in reproduction of the current code and does not represent a change.

11. What are “Special Project Employees”? Will they know who they are? Would the term “consultant” work for these types?

SCC RESPONSE: This is a “catchall” category to include any temporary hires that the Conservancy may make for special purposes in civil service categories other than those normally employed by the agency. As with consultant services, the Executive Officer would make a determination, in the event of any such hire, whether the duties expected of the employee are such that they should be required to comply with disclosure requirements.

12. Strike out “Code” and replace it with “Act.” This is more correct.

SCC RESPONSE: correction made. This is a grammatical or nonsubstantial change.

13. The first line should read, “All investments in and sources of income ~~in~~ from real estate sales...” This reads a little better (the “s” in “investments” was left off).

SCC RESPONSE: correction made. This is a grammatical or nonsubstantial change.

14. I just want to confirm that the code sections cited are still good.

SCC RESPONSE: The citation, referring to the Coastal Act’s definition of the “coastal zone”, is still good.

Exhibit 3: Written Comments

15. This should read, "...disclosure requirements described in Categoryies (a) and (b) and the disqualification requirements..." Consultants must be assigned to the broadest categories in the code.

SCC RESPONSE: change made. The resulting code is sufficiently related to the text made available to the public that the public was placed on adequate notice that the code or amendment could result from the original proposal, as FPPC requires that consultants be assigned to the broadest categories in the code.

16. Same as 15.

SCC RESPONSE: correction made. The resulting code is sufficiently related to the text made available to the public that the public was placed on adequate notice that the code or amendment could result from the original proposal, as FPPC requires that consultants be assigned to the broadest categories in the code.